

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK KAPITI,

07 Civ. 3782 (RMB) (KNF)

Plaintiff,

-against-

RAYMOND W. KELLY, in his official
Capacity as Commissioner of New York City
Police Department, Property Clerk, New York
City Police Department, and The City of New York,

Defendants.
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NOTICE OF MOTION
TO DISMISS
THIRD-PARTY COMPLAINT

THE CITY OF NEW YORK,

Plaintiff,

-against-

AMERICAN HONDA FINANCE CORPORATION
d/b/a HONDA FINANCIAL SERVICES,

Defendant.
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PLEASE TAKE NOTICE, that upon the annexed affidavit of TARA SCHOOLCRAFT, sworn to the 20th day of May, 2008, the affirmation of MICHAEL A. ROSENBERG, ESQ. duly affirmed on May 22, 2008, the Summons and Verified Complaint, the Third-Party Summons and Complaint attempted to be served and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court, to be held in the Courthouse thereof, located at DANIEL PATRICK MOYNIHAN UNITED STATES COURTHOUSE, 500 Pearl Street, New York, New York 10007 before the HON. RICHARD M. BERMAN on the 5th day of June, 2008, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgment, pursuant to F.R.C.P. § 12(b), dismissing the Third-Party Summons and Complaint for, *inter alia*, lack of in

personam jurisdiction, lack of subject matter jurisdiction and for failure to state a valid cause of action against the moving Third-Party Defendant, and for such other and further relief as to the Court may deem just, proper and equitable; and

PLEASE TAKE FURTHER NOTICE that the prime action is an action by the Plaintiff for damages pursuant to 42 U.S.C. § 1983 alleging his denial of due process of law, equal protection of the laws, the right to be free of arbitrary police action, excessive fines and unreasonable searches and seizures, under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution, and the movant asserts and retains its right to assert its claim for, *inter alia*, sanctions pursuant to F.R.C.P. Rule 11 for frivolous litigation; and

PLEASE TAKE FURTHER NOTICE, that pursuant to Court directive, answering affidavits, if any, are to be served, in hand, by no later than May 29, 2008.

Dated: New York, New York
May 22, 2008

s/Michael A. Rosenberg, Esq.

MICHAEL A. ROSENBERG, ESQ. (8770)

Attorney for Third-Party Defendant

AMERICAN HONDA FINANCE CORPORATION

122 East 42nd Street, Suite 606

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TO: STEVEN L. KESSLER, ESQ.
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MICHAEL A. CARDOZO
Corporation Counsel
Attn: PHILIP S. FRANK, ESQ.
Attorneys for THE CITY OF NEW YORK
The City of New York
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Pursuant to 22 NYCRR 130-1.1a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief, and after reasonable inquiry, the contentions contained in the annexed document(s) are not frivolous.

s/Michael A. Rosenberg, Esq.

MICHAEL A. ROSENBERG, ESQ. (8770)